

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.2295 OF 2022

Vijay Baban Kambale
Age 33 years; Occ: Service,
Residing at 2215/Barshi road, Front
MSEB, Barshi road, Vairag, Tal Barshi
District Solapur 413 402

....Petitioner.

Vs.

1.The State of Maharashtra
At the instance of Sr.Inspector of
Police, Rabale Police Station vide
their CR No.I-226-2017

2. XYZ.

Age 34 years, Occ: Nil,
Residing at Opp Krishna Petrol
Pump, Manegaon, Gairag, Tal-Barshi,
Dist-Solapur 413 402.

...Respondents.

....

Mr Shailesh Kharat i/b Rahul Arote for the petitioner.
Mr.KV Saste, for Respondent no.1-State.
Mr.Mohsin Pathan for Respondent No.2

....

**CORAM: REVATI MOHITE DERE &
R.N.LADDHA.**

DATE : 30 NOVEMBER 2022.

Order (Per R.N.Laddha,J.)

At the outset, the learned Counsel for the Petitioner
seeks leave to amend to delete the name of the prosecutrix

wherever it appear in the petition and replace it with the alphabets 'XYZ'. Leave granted.

2. Heard learned Counsel for the parties.

3. Rule. The Rule is made returnable forthwith, at the request of and with the consent of the learned Counsel for the parties. Learned Counsel for the Respondents waived service.

4. This is a petition for quashing FIR No.I-226 of 2017 registered at the Rabale Police Station, Navi Mumbai, alleging the commission of offences punishable under Sections 376, 420 and 506 of the Indian Penal Code. It is the case of the prosecution that the First Informant/Respondent No.2 and the Petitioner were known to each other since the year 2010 and since then they met regularly and engaged in sexual relations. However, on 4.6.2015 Respondent No.2 performed her marriage with another person. Petitioner, therefore, insisted Respondent No.2 to take divorce from her husband. Accordingly, she took divorce from her husband and came to Mumbai to reside with Petitioner. During her stay with Petitioner, she became pregnant. Petitioner then insisted her to terminate the pregnancy. However, Respondent No.2 refused to do so. It is alleged that on the pretext of marriage

Petitioner time and again established physical relations and not performed marriage and cheated her.

5. Mr Shailesh Kharat and Mr Mohsin Pathan, in unison, submitted that the parties have amicably settled the dispute. It is submitted that Respondent No.2 has filed the consent affidavits. It is submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. They submitted that the Petitioner and Respondent No.2 were in a live-in relationship, were staying together, and physical relations between them were consensual, and there was no inducement of any nature and due to misunderstanding and out of rage the impugned FIR has been lodged. They further submit that the physical relations between the Petitioner and Respondent No.2 were of free will and without any inducement of any nature being offered. Respondent No.2 has no complaint against the Petitioner. They submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Shambhu Kharwar Vs. State of Uttar Pradesh and Anr.*¹ Further, they also relied on the Judgments of this Court (Nagpur Bench) in *Aditya s/o Hemant Deshmukh Vs. State of Maharashtra and Another*,² decided on 12.7.2021 and *Taj @ Arjun s/o Ajay Mishra and Anr. Vs. State of Maharashtra*³, decided on 22.10.2019.

1 AIR 2022 SC 3901.

2 Cri.Application No.379 of 2020.

3 Cri.Application No.988 of 2019.

6. Learned APP for Respondent No.1 submits that appropriate orders may be passed.

7. It revealed from the record that Respondent No.2 had filed a copy of the consent affidavits dated 8.6.2022 and 28.11.2022 and an Aadhar Card duly attested by her. Respondent No.2 is present before the Court and stated that she has no objection if the FIR and the criminal case in question are quashed against the petitioner given the settlement between them. Respondent No.2 has reiterated the facts mentioned in her affidavits. Respondent No.2 has been identified by her Counsel. Learned APP has verified the original Aadhar Card of Respondent No.2.

8. We have examined the facts of the present case. Based on the material on record, more particularly the affidavits of the second Respondent, it is seen that the FIR was lodged due to misconception and misunderstanding. It is revealed from the record that the Petitioner and Respondent No.2 had known each other since 2010, and, after that have been intimate with each other. They met regularly and engaged in sexual relations on multiple occasions. In the meanwhile, Respondent No.2 got married on 4.6.2015 and after that got divorce from her husband. Thereafter, Respondent No.2 and Petitioner started living together at Airoli, Navi Mumbai and they continued to engage in sexual

relations. The allegations of Respondent No.2 demonstrates that her relationship with the Petitioner continued prior to her marriage and after her divorce and that their relationship was of a consensual nature. The allegations do not state that Petitioner had given a promise to Respondent No.2 to marry which at the inception was false and on the basis of which Respondent No.2 was induced into a sexual relationship. Having regard to the peculiar facts, no offence as alleged under Sections 376 of IPC is disclosed against the Petitioner.

9. Considering these facts and circumstances, we see no difficulty in quashing the impugned FIR *qua* the Petitioner. Accordingly, the Criminal Writ Petition is allowed. The Sessions Case No.549 of 2019 pending before the learned Sessions Judge at Thane, arising out of impugned C.R.No.I-226 of 2017 registered at the Rabale Police Station, Navi Mumbai, are quashed and set aside *qua* the Petitioner.

10. Rule is made absolute in the above terms.

11. Learned Counsel for Respondent No.2 to file his Vakalatnama, if not filed, within two weeks of the uploading of this order.

12. All concerned to act on the authenticated copy of this order.

(R.N.LADDHA, J.)

(REVATI MOHITE DERE, J.)